(2) Special damages for breach of contracts pursuant to paragraph 31 of the points of claim in the sum of RM32,343;
(3) General damages for wrongful suspension of its tender registration pursuant to paragraph 32 of the points of claim in the sum of RM552,584;
(4) Interest on (1) and (2) at the rate of 8% p.a. from date of the plaintiff's reference to arbitration that is 24 January 1990 till final payment and on (3) at the same rate from 25 April 1990 till full payment;
(5) Costs of the award (including arbitrator's fee, expenses, hiring room for the hearing) and costs of reference (including costs properly incurred by the plaintiff in the course of the arbitration) in the sum of RM70,400; and
(6) Costs of this application to be taxed, unless agreed.

KUPPUSAMY A/L BERAPPAN

v.

SELVANAYAGI A/L FERNANDO & ANOR.

HIGH COURT, SHAH ALAM
TUAN AZMEL HJ. MAAMOR JC
[CIVIL SUIT NO. 22-477-1992]
12 MARCH 1993

RENT CONTROL: Defendants owners of premises - Defendants obtaining order of Rent Tribunal for plaintiff/tenant to vacate premises - Plaintiff obtaining ex-parte injunction restraining defendants - Application to set aside injunction - Whether defendants entitled to resort to Rent Tribunal to obtain redress - Whether decision of Rent Tribunal unenforceable - Section 7(2) Specific Relief Act 1950.

The plaintiff was the tenant of rent controlled premises of which the defendants are the landowners. The defendants intended to effect development on the area where the premises were situated and applied to the Rent Tribunal which ordered the plaintiff to vacate the premises. The plaintiff obtained an ex-parte injunction to restrain the defendants from trespassing, damaging and destroying the plaintiff's residence and goods and the defendants applied to set aside the injunction.

The plaintiff objected to the application on the grounds that there was a suit pending in the Sessions Court between the parties on the same subject matter and as such the defendants should procced with this case instead of resorting to the Rent Tribunal to obtain redress.

The plaintiff further contended that by virtue of the provision of s. 7(2) of the Specific Relief Act 1950 the decision of the Rent Tribunal was unenforceable as it did not come within the meaning "proceedings in court".

Held:

[1] The proceedings in the Sessions Court in which the defendants sued the plaintiff for non-payment of rental and the plaintiff counterclaimed for damages could not serve as a bar against the defendants referring the matter to the Rent Tribunal under the provisions of the Control of Rent Act 1966. The claim by the defendants and the counterclaim by the plaintiff in the Sessions Court could be heard by that Court as and when that Court was ready to hear the case.

[2] Having regard to the nature and manner in which proceedings in the Rent Tribunal are conducted, the Tribunal was a Court within the meaning of s. 7(2) of the Specific Relief Act 1950 and the decision of the Rent Tribunal was enforceable against the plaintiff.

[3] It was quite clear that what the Legislature intended to exclude in amending s. 7 of the Specific Relief Act was the common law remedy of self help and its application should be confined for that purpose only.

[Defendants application to set aside injunction allowed. Damages ordered to be assessed. Plaintiff's writ and statement of claim dismissed and his action set aside for being frivolous and vexatious].

Case referred to:

Trustees of Leong San Tong Khoo Kongsi (Penang) Registered v. Poh Swee Siang [1987] 2 CLJ 302 / [1987] 2 MLJ 611 ***(dist)***

Legislation referred to:

Control of Rent Act 1966, ss. 16(1), 18(1), 19(1), 26
Control of Rent (Selangor) (Rent Tribunal) Rules 1967, rr. 4, 8, 9, 10
Specific Relief Act 1950, s. 7(2)

For the plaintiff - M.A. Vadiveloo; M/s. Veloo & Co.
For the defendants - Simon Hue; M/s. Ho, Loke & Koh

JUDGMENT

Azmel Hj. Maamor JC:

This is an application by the defendants for an order of the Court that the injunction granted *ex-parte* against the defendants on 10 November 1992 be set aside and that damages suffered by the defendants as a result of the injunction be assessed and be paid by the plaintiff to the defendants together with the costs of this application.

The plaintiff is the tenant of premises No. 101, Jalan Teluk Pulai, 41000, Kelang, Selangor and the defendants are the landlords. It is a rent controlled premises. The defendants intending to effect development on the area where the premises is situated had successfully obtained an order from the Rent Tribunal which sat on 24 August 1992 ordering the tenant to vacate the premises within 60 days from 24 August 1992, and the landlord to pay the tenant a compensation of RM2,500 upon the tenant vacating the premises.

On 7 November 1992, the plaintiff filed a writ of summons at this High Court asking the Court to issue an injunction to stop the defendants or any of them, their servants, agents, employees from trespassing, damaging and destroying the plaintiff's residence and goods. The application was heard *ex-parte* before Mr. Justice Wan Yahya on 10 November 1992 and it was granted. The defendants now apply to set aside the injunction.

In objecting to this application, the plaintiff raised two main grounds, namely:

1. There is a suit pending in the Sessions Court Kelang between the parties hereto in respect of the same subject matter. The defendants should proceed with this case instead of resorting to get redress from the Rent Tribunal.
2. By virtue of the provision of the newly amended s. 7(2) of the Specific Relief Act 1950 the decision of the Rent Tribunal is unenforceable as it does not come within the meaning "proceedings in the court".

As regards the plaintiff's first ground, in December 1980 the defendants sued the plaintiff for non-payment of rentals for the months of July 1979 to November 1980 for the sum of RM1190 and also asked for vacant possession of the premises. The plaintiff contested this claim and counterclaimed against the defendants for damages as a result of cutting of water supply to the premises by the defendants. This case was heard in the Kelang Magistrate Court in 1983. There was an appeal against the decision of the Magistrate to the High Court in Kuala Lumpur in 1986. The High Court ordered that the case be retried by the Kelang Magistrates Court. As the amount claimed by then had exceeded the jurisdiction of the Magistrates Court it was transferred to the Sessions Court, Kelang. The case at the Sessions Court could not go on for hearing as the exhibits that were earlier tendered in Court could not be retrieved by the defendants and they applied for the case be postponed *sine die*.

In my view the proceedings in the Sessions Court, Kelang cannot serve as a bar against the action taken by the defendants referring the matter to the Rent Tribunal. The defendants have legitimate grounds to refer the matter to the Rent Tribunal under the provisions of the Control of Rent Act 1966. The reason for the

defendants to refer the matter to the Rent Tribunal was because they intended to develop the land in question. The claim by the defendants and the counterclaim by the plaintiff in the Sessions Court, Kelang can be heard by that Court independently as and when the Sessions Court is ready to hear the case. In so far as the plaintiff is concerned, it is a claim for damages only. I therefore do not consider this reason as a strong ground.

The second ground raised by the plaintiff deals with the question whether the Rent Tribunal as set up under the Control of Rent Act 1966 comes within the meaning of a Court as required under s. 7(2) of the Specific Relief Act 1950. The plaintiff claims that the proceedings conducted by the Rent Tribunal cannot be considered as proceedings of a Court. Therefore, the order of the Rent Tribunal dated 24 August 1992 cannot be enforced and as such the plaintiff should not be required to vacate the premises.

Part IV of the Control of Rent Act 1966 deals with Recovery of Possession of Controlled Premises. The opening sentence of s. 16(1) states:

> 16(1) Except for an application made under ss. 18 and 19 for the recovery of possession of any controlled premises or any part thereof for the purpose of effecting or causing to be effected thereon any development, all applications for the recovery of possession of such premises or any part thereof shall be made to the court ...

Section 18 deals with the recovery of possession of controlled premises for the purpose of development. The opening sentence of s. 18(1) reads as follows:

> 18(1) The landlord of any controlled premises other than those within the City of Kuala Lumpur who desires to effect or cause to be effected thereto any development may apply for this recovery of the possession thereof to the Tribunal ...

Section 19 deals with the recovery of possession of controlled premises for the purpose of development within the areas of the City of Kuala Lumpur. The opening sentence of s. 19(1) reads as follows:

> 19(1) The landlord of any controlled premises within the areas of the City of Kuala Lumpur who desires to effect or cause to be effected thereto any development may apply for the recovery of the possession thereof to the Commissioner ...

As can be seen from the provisions of the said Act quoted above, a landlord who wishes to develop his rent controlled premises may apply for recovery of possession to the Tribunal if the land is outside the areas of the City of Kuala Lumpur. The premises, the subject matter of this case, is situated in the District of Kelang, Selangor.

The establishment of the Rent Tribunal for the Kelang District which heard the case of the parties hereto on 24 August 1992 was made in accordance with the Control of Rent (Selangor) (Rent Tribunal) Rules 1967 the enactment of which was made under s. 26 of the Control of Rent Act 1966.

Rule 4 of the said Rules sets out how summons should be served. It adopts the service of summons as enforced in the Magistrates Court. The practice and procedure in conducting its hearing is stated under Rule 8. From the provisions of Rule 8 it is quite obvious to me that the conduct of a Rent Tribunal proceeding is very similar to that of a Court proceeding. It also provides an appeal against the decision of the Tribunal under Rule 9. Rule 10 sets out the appeal procedure.

In the light of the provisions as contained in the Control of Rent (Selangor) (Rent Tribunal) Rules 1967, I am quite satisfied that the proceedings of the Rent Tribunal are conducted in the same manner as conducted by a Court. Therefore, even though the Rent Tribunal is not called a Court I am of the view that having regard to the nature and manner in which its proceedings are conducted, the Rent Tribunal is a Court within the meaning of s. 7(2) of the Specific Relief Act 1950. I therefore hold that the decision of the Rent Tribunal dated 24 August 1992 is enforceable against the plaintiff. If the plaintiff was dissatisfied with the decision of the Rent Tribunal, he should have filed an appeal against its decision in accordance with Rules 9 and 10 of the Control of Rent (Selangor) (Rent Tribunal) Rules 1967. But the plaintiff has failed to do so. It cannot be argued that the plaintiff was not aware of the decision of the Rent Tribunal. From the documents filed the plaintiff and his Counsel were aware of the hearing date of the Rent Tribunal. As a matter of fact the plaintiff did attend the proceedings. Subsequently on 26 August 1992 the plaintiff's Counsel received a letter from the defendants' Counsel informing him that the Rent Tribunal had proceeded with

its Hearing without his presence. In my view there was sufficient evidence to say that the plaintiff and his Counsel were fully aware of the proceedings of the Rent Tribunal on 24 August 1992. And there was ample time for the plaintiff to file an appeal against the Rent Tribunal's decision which is appealable within 21 days of the date of the decision, if he so wished to do. But nothing was done by the plaintiff. Hence on the expiry of 21 days the decision of the Rent Tribunal is deemed to be final.

There appears to be a conflict between the provision of s. 18(1) of the Control of Rent Act 1966 and the provision of the newly amended s. 7(2) of Specific Relief Act 1950. I was therefore prompted to look into the object and reason for the amendment of the Specific Relief Act 1950. The Explanatory Note to the Bill states as follows:

> This Bill seeks to amend the Specific Relief Act 1950 in consequence of the ruling of the Supreme Court in *Trustees of Leong San Tong Khoo Kongsi (Penang) Registered & Ors. v. Poh Swee Siang* [1987] 2 MLJ 611 that the existing s. 7 of the Act does not exclude the common remedy of self help, which according to the Supreme Court is a remedy which is always available, unless expressly excluded. The proposed s. 7 seeks to exclude self help in the circumstances specified in sub section (2) by requiring proceedings to be taken in the court.

In *Trustees of Leong San Tong Khoo Kongsi (Penang) Registered & Ors. v. Poh Swee Siang*, Hashim Yeop A. Sani, SCJ (as he then was) stated in his judgement as follows:

> In the context of the provision of s. 7 the word "may" is permissive and discretionary and it is not obligatory on the part of a person entitled to the possession of land to resort exclusively or solely to a court of law. In other words s. 7 of the Specific Relief Act 1950 does not exclude the common law remedy of self help. This is a remedy which is always available unless expressly excluded.

From the wordings of the Explanatory Note to the Bill it is quite clear to me that what the legislature intended to exclude in amending s. 7 of the Specific Relief Act 1950 was the common law remedy of self help. And its application should be confined for that purpose only. As such this case can be distinguished from the case of *Trustees of Leong San Tong Khoo Kongsi (Penang) Registered & Ors. v. Poh Swee Siang* on the following grounds.

Firstly, the property in *Poh Swee Siang's* case was not a rent controlled property and did not come under the Control of Rent Act 1966. The property, the subject matter of this case, is a rent controlled property.

Secondly, the landlord and his agents in the *Poh Swee Siang* case acted on their own to take possession of the property whereas the defendants in this case were armed with an order of the Rent Tribunal lawfully established under the Control of Rent Act 1966.

Thirdly, after having obtained the order of the Rent Tribunal and then to require the defendants to seek a remedy in Court would in my view negate the powers of the Rent Tribunal whose proceedings as I have said earlier was very similar to that of a Court. It would make a nonsense of the provisions of ss. 16, 18 and 19 of the Control of Rent Act 1966. In my view if the legislature intends to extend the application of the newly amended s. 7(2) of the Specific Relief Act to include such proceedings of the Rent Tribunal then it would have also caused the deletion of ss. 16, 18 and 19 of the Control of Rent Act. However, having read the Explanatory Note to the Bill, I am of the view that the application is limited to merely the exclusion of "common law remedy of self help".

In the circumstances I order that the injunction dated 10 November 1992 be set aside and the amount of damages incurred by the defendants arising from the order of injunction to be assessed by the SAR be paid by the plaintiff to the defendants and the costs of this application be also paid by the plaintiff to the defendants.

And after having examined the plaintiff's writ of summons and his statement of claim, I decide to dismiss them and set aside his action on the ground that they are frivolous and vexatious.